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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91224690
Party	Defendant Epinova Biotech S.r.l.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Vericel Corporation)	
)	
Opposer,)	
)	Opposition No. 91224690
v.)	
)	Application No. 79153787
EPINOVA BIOTECH S.R.L.)	
)	
Applicant.)	

ANSWER TO NOTICE OF OPPOSITION

Applicant responds to the Notice of Opposition as follows. The following paragraph numbers refer to the paragraph numbers in the Notice of Opposition.

1. Applicant does not have sufficient information to either admit or deny this allegation and, therefore, denies same and leaves Opposer to its proof.
2. Applicant does not have sufficient information to either admit or deny this allegation and, therefore, denies same and leaves Opposer to its proof.
3. Applicant does not have sufficient information to either admit or deny this allegation and, therefore, denies same and leaves Opposer to its proof.
4. Applicant admits the information contained in the three column table in the middle of paragraph 4 and that Exhibit A attached to the Notice of Opposition appears to include TSDR and Assignment records, but Applicant does not have

sufficient information to either admit or deny the other allegations and, therefore, denies same and leaves Opposer to its proof.

5. Applicant does not have sufficient information to either admit or deny this allegation and, therefore, denies same and leaves Opposer to its proof.
6. Denied as to the incorrectly stated filing date of the application. The other allegations are admitted, with the exception that the application was not originally filed with the quoted wording, but the quoted wording is now present in the application.
7. Denied.
8. Applicant does not have sufficient information to either admit or deny this allegation and, therefore, denies same and leaves Opposer to its proof.
9. Denied.
10. Denied.

AFFIRMATIVE DEFENSES

11. Upon information and belief, Opposer's Notice of Opposition is defective and fails to state a claim against Applicant upon which relief can be granted.
12. Upon information and belief, Opposer's alleged EPICEL trademark rights are limited in scope in view of the plethora of third party trademark applications, registrations, and activities in the United States (for example, there are over 5000 live US trademark applications and registrations in Classes 1, 3, 5, and 42 for

GEL trademarks and CEL trademarks) and, therefore, are not likely to be



confused with Applicant's trademark.

13. Opposer's alleged EPICEL trademarks have a different appearance, pronunciation, connotation, and commercial impression than Applicant's



trademark. The GEL portion of Applicant's contrived trademark was derived from "hydrogel." Opposer's EPICEL trademark (like Opposer's VERICEL business name) has nothing to do with gel, gels, or hydrogel. As a result, there is no likelihood of confusion.

14. Upon information and belief, there is no likelihood of confusion with respect to



Applicant's trademark for the goods identified in Applicant's US trademark application in view of, *inter alia*, the limited scope of Opposer's alleged EPICEL trademarks, the plethora of third party trademarks ((for example, over 5000 live US trademark applications and registrations in Classes 1, 3, 5, and 42 for GEL trademarks and CEL trademarks), the differences in the parties' trademarks, the different goods/services of the parties, the different manner of use of the parties' trademarks, the different targeted customers of the parties, and the sophistication of the different targeted customers of the parties.

15. Applicant's targeted customers are sophisticated people who would not be easily confused by the parties' respective trademarks (if, by chance, they came across both parties' trademarks), and, upon information and belief, Opposer's targeted

customers are sophisticated people who would not be easily confused by the parties' respective trademarks (if, by chance, they came across both parties' trademarks).

16. Applicant's goods identified in the subject application are not impulsively purchased by customers, but, instead, are purchased by knowledgeable people after a reasoned study. As a result, a likelihood of confusion with Opposer's alleged trademarks is precluded.
17. Upon information and belief, Opposer has failed to police its alleged rights (for example, there are over 5000 live US trademark applications and registrations in Classes 1, 3, 5, and 42 for GEL trademarks and CEL trademarks) and, therefore, Opposer's alleged rights are limited in scope and are not harmed or likely to be

harmed by the registration of Applicant's  trademark.

WHEREFORE, Applicant prays that the Opposition be dismissed and that

registration for the  trademark be granted.

Date: January 12, 2016

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: /Duane M. Byers/

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing is being served by first class mail, postage prepaid, on Opposer's counsel on this date, at the address of record:

JEFFREY H KAUFMAN
OBLON et al
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/Duane M. Byers/